

REMARKS/ARGUMENTS

Applicants have received and carefully reviewed the Final Office Action of the Examiner mailed January 22, 2009. Claims 1, 27, 29-33, 40-49, and 59-60 are pending, with claims 29-33 previously withdrawn from consideration. Claims 1, 27, 40-49, and 59-60 have been rejected. Applicants respectfully traverse all objections, assertions, and rejections made by the Examiner. Claims 1 and 40 are amended to correct typographical errors, with no substantive changes presented herein. Favorable consideration of the following remarks is respectfully requested.

Claim Rejections – 35 USC § 102

Claims 1, 40-49, and 59-60 stand rejected under 35 U.S.C. §102(b) as being anticipated by Hannam et al. (U.S. Patent No. 5,649,959) in view of Kleshinski (U.S. Patent 6,939,361). After careful review, Applicants must respectfully traverse the rejection.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). (MPEP 2131).

In rejecting independent claims 1 and 40, the Examiner asserts that Hannam et al. disclose “an apparatus comprising: a flexible disk 30 being sized to circumferentially cover the blood vessel puncture site and further being sufficiently flexible to conform to and seal with the blood vessel puncture (Column 7, Lines 41-54), a hemostatic body 52, a resilient extension element 62, the release member comprises a suture 36 which would inherently be secured to the hemostatic body since the suture is capable of contacting the body and the body is an adhesive (Column 8, Lines 32-47).” Specifically regarding claim 40, the Examiner further asserts that “element 38 couples the flexible disk to the hemostatic body and is smaller than the disk and hemostatic body diameter since they both expand once outside of the sheath.” Applicants believe that the Examiner has mischaracterized the reference.

First, nowhere do Hannam et al. appear to disclose that spring member 62 is coupled to the hemostatic material (that is coupled to the center of the flexible plug/disk)

opposite the flexible plug. Even if spring member 62 were considered to be coupled to both a hemostatic material and anchor 30 (an assumption not accepted as fact by the Applicants), spring member 62 does not appear to be coupled to a hemostatic material opposite the flexible plug (anchor 30), as claimed.

Secondly, Hannam et al. do not appear to disclose any release mechanism that positions and releases the flexible plug/disk intravascularly. In fact, Hannam et al. do not appear to release the plug/disk at all. Only after gelatinous material 52 has cured, and a seal formed in the puncture, is filament 36 cut, leaving anchor 30 secured in place by the combination of the remaining filament (under tension) and the cured gelatinous material. At no point do Hannam et al. appear to contemplate actually “releasing” the flexible plug/disk intravascularly.

Lastly, the Examiner’s assertion that element 38 couples the flexible disk to the hemostatic body and is smaller than the disk and hemostatic body diameter is certainly in error. Plunger 38 does not couple a hemostatic body to the flexible disk at all. It appears that plunger 38 may force gelatinous material 52 into the puncture where it eventually contacts anchor 30, but plunger 38 in no way appears to couple the two elements together, and is clearly not positioned within the wall of a blood vessel puncture site, as the claimed connector is recited to be. Further, claim 40 has no limitations pertaining to the size of such an element.

As discussed above, Hannam et al. do not appear to disclose each and every element of independent claims 1 and 40. Accordingly, Hannam et al. cannot anticipate the claims. Since claims 41-49 and 59-60 depend from claims 1 or 40 and add additional elements thereto, these claims also cannot be anticipated by Hannam et al. Applicants respectfully request that the rejection be withdrawn.

Claim Rejections – 35 USC § 103

Claim 27 stands rejected under 35 U.S.C. §102(b) as being anticipated by Hannam et al., or in the alternative, under 35 U.S.C. §103(a) as obvious over Hannam et al. in view of Haaga (U.S. Patent 5,254,105). After careful review, Applicants must respectfully traverse the rejection.

For at least the reasons discussed above, Applicants believe that independent claim 1 is patentable over the Hannam et al. Accordingly, Applicants submit that claim 27, which depends from claim 1, and adds additional elements thereto, is also patentable over Hannam et al. Haaga does not appear to remedy the shortcomings of Hannam et al. discussed above. Applicants respectfully request that the rejection be withdrawn.

Conclusion

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that the claims are in condition for allowance, and issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

MARK ASHBY et al.

By their Attorney,

Date: March 14, 2005



Glenn M. Seager, Reg. No. 36,926
CROMPTON, SEAGER & TUFTE, LLC
1221 Nicollet Avenue, Suite 800
Minneapolis, Minnesota 55403-2420
Tel: (612) 677-9050